



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 3, 1998

Mr. John Schneider  
First Assistant City Attorney  
City of Pasadena  
P.O. Box 672  
Pasadena, Texas 77501

OR98-2582

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID# 119302 and ID# 119630.

The City of Pasadena (the "city") received an open records request for the following ten categories of documents pertaining to a fatal gas line explosion that occurred on July 20, 1998 at 816 Center Street:

1. A listing of all city departments that had anything to do with investigating this incident.
2. A listing of all city departments that had anything to do with overseeing, inspecting, and/or supervising the work to be done at the scene of the incident.
3. All reports filed by any departments in regard to the investigation of the fire and explosion.
4. A listing of all evidence seized, and by whom.
5. Results of any testing performed on any of the evidence seized.
6. Any and all photographs and/or videotapes of the scene.
7. A list of all witnesses and copies of any witness statements.

8. Copies of any reports filed by the city to other government agencies.
9. Any correspondence between Ramex and the city in regard to the work being done on Center Street, between Harris and Elm, which is not included with the contract.
10. Copies of any reports filed by inspectors from the city overseeing the construction work being done between Harris and Elm on Center Street.

Similarly, the Pasadena Volunteer Fire Department received an open records request for "your report" pertaining to the same incident as well as all related photographs. You have released in response to the requests a five page "Fire Incident Report."

You have submitted to this office as responsive to the requests the following documents that you contend are excepted from required public disclosure pursuant to section 552.103 of the Government Code:

four "Station Run Sheets," which detail the personnel from each fire station that responded to the incident

three "Apparatus Reports," which detail the equipment used at the scene of the incident

one "Fire Incident Report," which details, among other things, the times that each fire unit left for, arrived at, and departed the scene

one page of handwritten notes regarding the victims of the fire, their relatives, and another owner of property damaged by the fire

one three-page memorandum from the fire chief to the city attorney explaining the above listed documents

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The gas line explosion resulted in the death of one individual and severe injuries to three others. You have submitted to this office a notice of claim the city received alleging that the city

was negligent in the manner in which it contracted the road construction project at which this explosion occurred, negligent in the manner in which permits were issued, negligent in its contact of Entex,

negligent in failing to oversee compliance with Code and regulations,  
and negligent in failing to thoroughly investigate the location of agas  
lines at and around Center Street.

In this instance, given the totality of the circumstances, we conclude that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. The records you submitted to this office may therefore be withheld at this time.<sup>1</sup>

We note, however, that the records you have submitted to this office are not representative of all of the documents sought by the requestors. Nor have you represented to this office that the city does not possess other documents that come within the ambit of the requests. To the extent that the city possessed such other documents at the time the open records requests were received, those records may not be withheld pursuant to section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/ch

Ref.: ID# 119302, ID# 119630

Enclosures: Submitted documents

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<sup>1</sup>In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

cc: Mr. Bruce Harrison  
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